

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILEDUNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

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GLENN HAROLD DELPHA, SR.,)

Petitioner,)

v.)

Case No. 2:16-cv-60 IL0

SOUTHERN STATE CORRECTIONAL
FACILITY,)

Respondent.)

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**
(Docs. 4, 5, 9 and 11)

This matter came before the court for a review of the Magistrate Judge's October 27, 2016 Report and Recommendation ("R & R") (Doc. 7), in which he recommended that the court grant Respondent Southern State Correctional Facility's motion to dismiss Petitioner Glenn Harold Delpha, Sr.'s petition for writ of habeas corpus (Doc. 1). On November 21, 2016, Petitioner sent a letter to the Clerk of Court, which the court will treat as an objection. In his one-page objection, Petitioner, a pretrial detainee in the custody of the State of Vermont, stated he has not received a speedy trial in the Vermont Superior Court, Criminal Division in Rutland, Vermont. Petitioner also opposed a mental health examination purportedly ordered by the Vermont Superior Court and asserted that the prosecutor and his public defender were stealing from him. Petitioner requested that this court conduct his trial. Petitioner does not point to any error in the Magistrate Judge's recommendation that his petition be dismissed because this court is not authorized to take over the prosecution of Petitioner's state court case.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings

or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

In his six page R & R, the Magistrate Judge carefully reviewed the factual record and the legal issues before the court. Because Petitioner is in the pretrial phase of his proceedings and thus is not in custody pursuant to a state court judgment of conviction, the Magistrate Judge concluded that Petitioner's petition should be construed pursuant to 28 U.S.C. § 2241. The Magistrate Judge recommended dismissal of the petition because Petitioner had not exhausted his state court remedies. The Magistrate Judge further determined that Respondent's motion to dismiss should be granted on *Younger v. Harris*, 401 U.S. 37, 46 (1971) abstention grounds. The court agrees with the Magistrate Judge's conclusions and therefore adopts them as the Opinion and Order of this court.

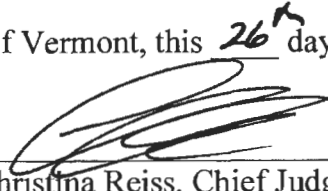
CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R as the court's Opinion and Order, GRANTS Respondent's motion to dismiss, and DISMISSES Petitioner's petition for writ of habeas corpus.

Pursuant to Fed. R. App. P. 22(b)(1) and 28 U.S.C. § 2253(c)(2), the court DENIES Petitioner a certificate of appealability in this matter because Petitioner has failed to make a substantial showing of the denial of a constitutional right. It is certified that any appeal of this matter would not be taken in good faith, pursuant to 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 26th day of January, 2017.


 Christina Reiss, Chief Judge
 United States District Court